IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2422 OF 2004

Shaw Wallace Agrochemicals Ltd.,)
A company incorporated under the)
Companies Act, 1956 having its head)
office at Udyog Bhavan, 29, Valchand)
Hirachand Marg, Ballard Estate,)
Mumbai-400 038.)..PETITIONER

Versus

1. R.Kripakar, F-36, Rajeshwari,)
17th Road, Chembur, Mumbai-400 071.)
2. Shaw Wallace Employees' Union, having)
its office at 3, Walchand Hirachand)
Marg, Mumbai-400 038.)
3. Shaw Wallace & Co. Ltd., Dunlop)
House, 132/A, Dr. Annie Besant)
Road, Worli, Mumbai-400 018.)
4. Mr. V.P. Rothe, Member, Industrial)
Court, at Mumbai.)..RESPODNENTS

Mr. J.P.Cama , Senior Counswel with Ms. Savita Upadhyay &
Ms.Mosan Modi i/b.Haresh Mehta & Co., for the petitioner.
Mr. R.D. Bhat, for Respondents.

CORAM: F.I. REBELLO, J.

DATE : 14th September,2004

JUDGMENT:

. The 1st respodnent was apponted as a Clerk

since 1st March, 1970 in the Agrochemicals Division of Shaw Wallace & Co., Ltd. Initially he was appointed in the Shipping Division. The terms and conditions of services were governed by the contract of employment. On 21st June, 1995 the 1st respondent came to be transferred from the Shipping Division to the Agrochemicals Division in Chennai of the respodnent No.3. The 1st respondent accepted the said transfer under protest. In between there was a settlement entered into between the respodnent No.3 and the Union. In terms of the said settlement several employees accepted voluntary retirement scheme. It was also agreed that all the workmen/employees covered by the Memorandum of Settlement would individually sign the Memorandum Settlement as a token of acceptance of the clauses set out in the Memorandum of Settlement. The respondent No.1 was not one of those who have signed the settlement. Another settlement was entered into between the respondent No.3 and the Union. Under the said settlement the respondent No.3 agreed that the respondent No.3 will not retrench the workmen of Agrichem office/Establishment who do not opt for VRS that may be framed by the Company as agreed under this settlement. It was further agreed that the employees who decided not to opt for VRS when the same is introduced, the services of such employees will be transferred to any of the offices, factories, establishments, group companies, associate companies, subsidiaries or sister concerns of the company existing or which may come in existence in future situated anywhere in India as may be decided by the

Company from time to time in its sole discretion. It was further agreed that the employees who are transferred in terms of clause (s) will continue to be governed by the service conditions as applicable to them at Chennai under various instruments governing the controlling their service conditions including this settlement inspite of their working at any other place in India and their services will always be transferable to any of the offices, factories, establishments, group companies, associate companies. There is some dispute about the genuiness of the settlement, which need not be adverted to for the present.

2. The respondent NO.3 by letter dated 25th January, 2002 intimated to the respodnent No.1 that his services are to be transferred to Mumbai. The petitioner accordingly accepted the said transfer by letter dated 11th February, 2002. The Respondent No.1 was advised to report to Mr.Kiran Karve at Shaw Wallace & Co., Ltd. Bank of Baroda Building, 2nd Floor, 3, Walchand Hirachand Marg, Ballard Estate, Mumbai. On so reporting the respodnent NO.1 continued to work with the respondent No.3.

3. By letter of April 30, 2003 the General Manager, Personnel of petitioners intimated to the respondent No.3 that a new company called Shaw Wallace Agrochemicals Ltd., has been formed and the services of the respodnent NO.1 are transferred to Shaw Wallace Agrochemicals Ltd., with effect from 1st April, 2003.

Thereafter the respondent No.1 was served with a letter dated May 21, 2004 by the petitioners intimating to him that he is transferred to Dibrugarh, Assam with immediate effect. The respodnent No.1 by letter dated 31st July, 2004 addressed a letter both to the respondent No.3 as well as to the petitioner contending that he could not be transferred out of Mumbai as per his service conditions. He further pointed out that he was aged 55 years and that the transfer to Northern State is considered as punishment transfer. He also set out that he has been transferred to Dibrugarh only because the respondent No.1 refused to accept promotion as an Executive for which he has been pressurised by the superiors. He also set out that he purchased a Flat at Vashi by taking a loan and intends to shift his family to Mumbai. The petitioners thereafter replied to the respondent No.1's letter dated 7th June, 2004.

3. The respondent No.1 thereafter filed the complaint on 8th June, 2004. The learned Industrial Court after considering the material on record was pleased to allow the application for interim relief and stayed the order of transfer. By this order dated 17th July, 2004 the Industrial Court while considering the matter addressed itself to the issue as to whether the respondent No.1 had made out a prima facie case and also in whose favour the balance of convenience would lie and whether any prejudice is occasioned to the complainant if the transfer order is not stayed. The learned Industrial Court held in favour of the

respondent No.1. The petitioner company aggrieved by the said order has preferred the present petition.

4. At the hearing of this petition on behalf of the petitioner learned Counsel contends that it was open to the respondent No.3 in terms of the settlement to transfer the services of the petitioner to any other sister concern of respondent No.3. The petitioner, it is contended, is a sister concern of the respondent No.3. It is further set out that the respondent No.3 has Rules and Regulations which are at Exh.B to the petition.Admittedly these are not certified standing orders. The issue as to whether the said conditions of service would be applicable to transfer respondent No.3 to petitioner company will have to be in issue. It is submitted on behalf of the petitioner company by the learned Counsel that the settlement itself provided for such transfer and as such the respondent No.1 in the absence of establishment of malafides and victimisation could not have challenged the order of transfer. The learned Industrial Court has not addressed itself to the relevant issues and on that count this Court ought to interfere with the impugned order.

3. In the instant case it is clear that the respondent No.1 was in the service of the respondent NO.3. At this prima facie stage there was nothing in the letter of employment which provided for transfer from Chennai to any other establishment of respondent No.3.

. However, subsequent to the VRS and the settlement, the question would be as to whether the services of the respondent No.1 can once again be transferred to another sister concern. The respodnent NO.1 has no doubt disputed the genuiness of Exhibit "G". Even assuming that Exhibit "C" is a settlement all that Exhibit "G" would show is that the respondent No.1 can be transferred to any of the offices, factories,establishments, group companies. The respondent No.3 acted on the same and transferred the respondent No.1 from Chennai to Mumbai office. In other words the services were transferred to the Mumbai office of the same company namely the respondent NO.3. The question is after such a transfer was it open to the respondent NO.3 thereafter to transfer the services of the respondent No.1 to the petitioner company and whether the Respondent No.3 after bringing the respondent No.1 from Chennai to Mumbai could transfer him to a sister company, which posted him at Mumbai and then transferred him to Assam. As noted earlier the respondent No.1 is aged 55 years. He has disputed the right of the respondent No.3 to transfer the respondent No.1 to the petitioner. He has also pleaded that he was transferred because he refused to accept the promotion as an Executive.

4. There is no dispute that the respondent NO.1 was in the service of respondent NO.3 and continued to be so until the purported transfer from respondent

NO.3 to the petitioner by letter of April 30, 2003. The question really then would be whether it was open to the respondent No.3 to transfer the services of the respondent NO.1 to the petitioner. In M/s.Kundan Sugar Mills v. Ziyauddin and Ors., AIR 1960 SC 650 the Apex Court has noted that an employee cannot be transferred from one established owned by the employer to another establishment subsequently owned and started by him unless the contract of employment provided for such a transfer.

. In other words in the absence of an express term in the contract of service between the employer and employee that the latter should serve in any future concerns with the former might acquire or start, a person employed in an establishment cannot be transferred to some other independent concern started by the same employer at another place. In the instant case the petitioner is a distinct entity from the respodnent No.3 in other words not the same employer may be a sister concern. But in law for all purposes they are independent persons. Secondly, the purported Rules of Respondent No.3 at Exh.B are not Standing Orders which are applicable, but general Rules made by the respondent No.3. Prima facie because of such Rules by itself the respondent NO.3 would not be in a position to transfer its employees to another independent employer like the petitioner herein. Even if the settlement entered into between the respondent No.3 and the Union instead of retrenchment provided for transfer to a sister company, in the instant case

the respodnent No.1 was transferred from Chennai to Mumbai in the office of the respondent No.3 itself. Prima facie the respodnent NO.1 would stand absorbed at the Mumbai office of respondent No.3. It was thereafter prima facie not possible to transfer the respondent No.1 to some other company like the petitioner.

5. The Industrial Court has exercised its discretion on the facts and circumstances. The respondent No.1 was serving at Chennai. He has been transferred to Mumbai in the year 2003. He is aged 55 years. He is now been sought to be transferred to Dibrugarh, Assam. His contention is that this is punishment posting as he refused to accept the promotion. In my opinion considering the facts and circumstances this would not be a fit case for this Court to interfere in the exercise of its extra ordinary jurisdiction. Hence the following order:-

1. For the aforesaid reasons, I find no merits to interfere. Hence Petition rejected.

2. However, considering the facts and circumstances the Industrial Court is directed to dispose of the complaint within four months from today.

(F.I. REBELLO, J.)